

HOUSE AMENDMENTS TO HOUSE BILL 2327

By COMMITTEE ON HEALTH CARE

April 19

1 In line 2 of the printed bill, after “care” insert “; creating new provisions; and amending ORS
2 441.087, 443.012 and 443.416”.

3 Delete lines 4 through 12 and insert:

4 **“SECTION 1. (1) As used in this section and section 2 of this 2021 Act:**

5 **“(a) ‘Declared emergency’ includes:**

6 **“(A) A state of emergency declared under ORS 401.165.**

7 **“(B) A public health emergency.**

8 **“(b) ‘Emergency’ has the meaning given the term in ORS 401.025.**

9 **“(c) ‘Emergency response plan’ means a protocol established by a long term care provider
10 to respond to a public health emergency, including procedures for quarantining infected
11 residents in the event of a disease outbreak, as defined in ORS 431A.005, at the provider’s
12 facility.**

13 **“(d) ‘Long term care provider’ includes:**

14 **“(A) A skilled nursing facility, as defined in ORS 442.015;**

15 **“(B) A residential care facility, as defined in ORS 443.400; and**

16 **“(C) A facility with a memory care endorsement, as described in ORS 443.886.**

17 **“(e) ‘Personal protective equipment’ includes specialized clothing or equipment worn as
18 protection against a hazard, such as face masks, face shields and gowns.**

19 **“(f) ‘Public health emergency’ means a public health emergency declared under ORS
20 433.441.**

21 **“(2) The Department of Human Services, in collaboration with the Oregon Health Au-
22 thority, shall:**

23 **“(a) Adopt rules to ensure that long term care providers have the appropriate resources
24 to enable them to prepare for public health emergencies and to respond to public health
25 emergencies, including rules establishing:**

26 **“(A) Requirements for the use and availability of personal protective equipment and the
27 use of the equipment by the residents, consistent with guidelines issued by the United States
28 Centers for Disease Control and Prevention or other state or federal agencies;**

29 **“(B) Standards for cleaning and disinfecting personal protective equipment;**

30 **“(C) Requirements for the frequency of and procedures for screening residents for in-
31 fectionous diseases;**

32 **“(D) Requirements for evacuation plans under various scenarios of public health emer-
33 gencies;**

34 **“(E) Requirements for training staff in preparation for public health emergencies, in-
35 cluding but not limited to training staff on the elements of the emergency response plan that**

1 direct or relate to staff preparation and response to a public health emergency, and updating
2 staff training and information to address rapidly changing conditions;

3 “(F) A requirement for a long term care provider to update its emergency response plan,
4 in collaboration with staff, to prepare for public health emergencies or in response to new
5 federal or state guidelines related to disaster responses by long term care providers, includ-
6 ing a requirement that staff receive notice of any significant updates to the emergency re-
7 sponse plan if the updates affect staff preparation or response to a public health emergency;

8 “(G) A requirement that a long term care provider make the provider’s emergency re-
9 sponse plan available upon request in languages other than English if the department pro-
10 vides translation services; and

11 “(H) A requirement that a long term care provider post, in a location commonly accessed
12 by employees, materials prepared and provided by the department informing employees that
13 an emergency response plan exists and will be made available upon request in languages
14 other than English if translation services are available.

15 “(b) Study and distribute best practices for systems that reduce air pollutants and the
16 spread of infectious disease.

17 “(c) Develop and update as necessary a long term care rapid response plan to be imple-
18 mented in the event of a public health emergency. The plan must include but is not limited
19 to requirements for department staff with education or experience and competence in long
20 term care disease prevention and control to provide immediate consultation and technical
21 assistance to long term care providers and recommendations for evidence-based best prac-
22 tices in responding to the emergency and protecting the health and safety of the residents.

23 “(d) Adopt by rule requirements for a long term care provider to include in the provider’s
24 emergency response plan an isolation prevention plan that must be provided to any resident
25 or member of the public upon request. The isolation prevention plan must ensure, to the
26 greatest extent practicable, that:

27 “(A) Residents can continue to engage in in-person contact and communication with
28 other residents and with family members, friends and other external support systems during
29 a public health emergency to the extent that the resident desires such contact and commu-
30 nication and the in-person contact is consistent with the circumstances of the public health
31 emergency, orders that have been issued to address the public health emergency and the
32 provider’s emergency response plan.

33 “(B) If in-person contact and communication is physically impossible due to guidelines,
34 requirements or other official limitations imposed on in-person contact and communication,
35 residents, including residents who are physically isolated due to the provider’s emergency
36 response plan, can engage, as they reasonably desire, in face-to-face, verbal or auditory
37 contact and communication with other residents and with family members, friends and other
38 external support systems through the use of electronic or virtual means or methods, in-
39 cluding but not limited to computer technology, the Internet, social media, videoconferencing
40 or other technological means or methods.

41 “(C) The provider offers to residents who experience cognitive impairments that limit
42 their ability to express their desire for virtual contact or communication with family mem-
43 bers, friends or other external support systems the opportunity for such communication,
44 including by reaching out to inform individuals listed on the resident’s care plan that virtual
45 contact is available.

1 **“(D) Residents who have disabilities that impede their ability to communicate, including**
2 **but not limited to residents who are blind, deaf or deaf-blind or have cognitive limitations,**
3 **including Alzheimer’s disease or other forms of dementia, have access to assistive and sup-**
4 **portive technology as necessary to facilitate their face-to-face, verbal or auditory contact**
5 **and communication with other residents and with family members, friends and other ex-**
6 **ternal support systems.**

7 **“(E) Notwithstanding subparagraphs (C) and (D) of this paragraph, a resident may not**
8 **be required to engage in virtual contact or communication.**

9 **“(e) Adopt by rule requirements for long term care providers to acquire and maintain:**

10 **“(A) Technological equipment necessary to ensure that a provider can comply with the**
11 **requirements of paragraph (d) of this subsection.**

12 **“(B) A supply of personal protective equipment that the provider may access during an**
13 **emergency to the extent that personal protective equipment is reasonably available.**

14 **“(C) A backup power source, which need not be installed or integrated into a facility’s**
15 **infrastructure, that the provider may use during a power outage for the purpose of operating**
16 **critical appliances including refrigeration and portable heating and cooling devices necessary**
17 **to preserve medications, supplies or other equipment critical to a resident’s care or imme-**
18 **diata safety on a temporary basis.**

19 **“(f) Provide financial assistance to long term care providers that are preparing for, re-**
20 **sponding to or recovering from a public health emergency to purchase equipment required**
21 **under paragraph (e) of this subsection from available funds that are continuously appropri-**
22 **ated to the department for expenditure on each type of long term care provider. The de-**
23 **partment may establish a separate account for this purpose.**

24 **“(g) Collaborate with appropriate state and local agencies to provide a supply of personal**
25 **protective equipment sufficient to meet the anticipated needs of long term care providers**
26 **during a public health emergency, facilitate the distribution to long term care providers upon**
27 **request when a provider’s supply reaches critical levels and in a manner that preserves to**
28 **the greatest extent practicable a supply of personal protective equipment for all long term**
29 **care providers who may request it.**

30 **“(h) Be advised by the Long Term Care Emergency Preparedness and Response Team**
31 **created in section 2 of this 2021 Act in the adoption of rules under this subsection.**

32 **“(3) The consultation, technical assistance and recommendations described in subsection**
33 **(2)(c) of this section must be provided separate from any compliance activity. Adherence to**
34 **any recommendation does not guarantee that the department or the authority will find a**
35 **long term care provider to be in compliance with regulatory requirements during a subse-**
36 **quent survey or inspection.**

37 **“SECTION 2. (1) The Long Term Care Emergency Preparedness and Response Team is**
38 **created in the Department of Human Services and consists of 16 members with education**
39 **and experience in emergency preparedness and response in the long term care industry, ap-**
40 **pointed by the Governor as follows:**

41 **“(a) Two members from the department;**

42 **“(b) Two members from the Oregon Health Authority;**

43 **“(c) Two members representing skilled nursing facilities;**

44 **“(d) Two members representing residential care facilities;**

45 **“(e) One member from a local public health authority;**

1 “(f) One member from the Office of Emergency Management;

2 “(g) Two members who are health care providers with expertise in long term care and

3 public health epidemiology and disaster response;

4 “(h) The Long Term Care Ombudsman;

5 “(i) Two members who are direct care workers employed by a long term care provider;

6 and

7 “(j) One consumer of long term care.

8 “(2) Members of the Long Term Care Emergency Preparedness and Response Team serve

9 as volunteers and are not entitled to compensation or reimbursement for serving on the

10 team.

11 “(3) The Long Term Care Emergency Preparedness and Response Team shall:

12 “(a) Confer with residents in long term care provider facilities as necessary and appro-

13 priate to assist in developing recommendations under this subsection;

14 “(b) Apply, when appropriate and practicable, available health equity information and

15 impacts on rural communities in developing recommendations under this subsection; and

16 “(c) Advise the department in:

17 “(A) How to coordinate with the Oregon Health Authority in preparing for emergencies

18 and how to communicate with the authority and long term care providers in the event of an

19 impending or declared emergency;

20 “(B) How to coordinate the responses of state agencies and local public health authorities

21 to an impending or declared emergency;

22 “(C) Developing plans to address staffing shortages caused by impending or declared

23 emergencies;

24 “(D) Developing plans for the distribution of vaccines and other treatments for infectious

25 diseases to long term care providers, and the providers’ staff and residents;

26 “(E) Developing guidance or rules to implement during impending or declared emergen-

27 cies to support residents’ access to care and to promote the safety of residents and staff,

28 which may include waiving certain staffing or training requirements;

29 “(F) Developing methodologies to support the isolation prevention plans developed by long

30 term care providers under section 1 (2)(d) of this 2021 Act; and

31 “(G) How to identify the need for resources and how to distribute and acquire needed

32 resources including but not limited to personal protective equipment during an impending

33 or declared emergency.

34 “(4) If an impending or declared emergency primarily involves the spread of an infectious

35 disease, the authority and the department shall consult with the Long Term Care Emergency

36 Preparedness and Response Team, including in the development of guidance regarding the

37 methodology, timing and frequency of testing residents, volunteers and staff of the long term

38 care provider, and others who enter the facility who may need to be tested.

39 “SECTION 3. The Department of Human Services shall develop training to be made

40 available to local public health authorities or approve training by third parties to support

41 local public health authorities in understanding the responsibilities of long term care facili-

42 ties and the emergency needs and unique needs of residents of each of the following types

43 of long term care:

44 “(1) Skilled nursing facilities, as defined in ORS 442.015;

45 “(2) Intermediate care facilities, as defined in ORS 442.015;

1 **“(3) Residential care facilities, as defined in ORS 443.400; and**

2 **“(4) Facilities with memory care endorsements, as described in ORS 443.886.**

3 **“SECTION 4.** ORS 441.087 is amended to read:

4 “441.087. (1) The Department of Human Services shall, in addition to any inspections conducted
5 pursuant to complaints filed against long term care facilities, conduct at least one general inspection
6 of each long term care facility in the state each calendar year, including, but not limited to, entering
7 the facility, interviewing residents and reviewing records. No advance notice shall be given of any
8 inspection conducted pursuant to this section.

9 “(2) Any state employee giving advance notice in violation of subsection (1) of this section shall
10 be suspended from all duties without pay for a period of at least 10 working days, or for a longer
11 period as determined by the Director of Human Services.

12 **“(3) If an on-site inspection is foreclosed by a public health emergency, as defined in**
13 **section 1 of this 2021 Act, the department shall conduct a virtual inspection by electronic**
14 **means. A virtual inspection must include all elements of an on-site inspection described in**
15 **subsection (1) of this section that are capable of being performed virtually.**

16 **“SECTION 5.** ORS 443.012 is amended to read:

17 “443.012. (1) As used in this section and ORS 443.417:

18 “(a) ‘Disease outbreak’ has the meaning given that term in ORS 431A.005.

19 “(b) ‘Facility’ means:

20 “(A) A long term care facility, as defined in ORS 442.015;

21 “(B) A conversion facility, as defined in ORS 443.400; and

22 “(C) A residential care facility, as defined in ORS 443.400, including a residential care facility
23 with a memory care endorsement.

24 “(2) An administrator of a facility and the employees of the facility, as specified by the Depart-
25 ment of Human Services by rule, must receive training in recognizing disease outbreaks and in-
26 fection control at the time of hiring, unless the administrator or the employee has received the
27 training at another facility within the 24-month period prior to the time of hiring, and annually as
28 part of, and not in addition to, the administrator or employee’s continuing education requirements.

29 “(3) The department, in consultation with the Oregon Health Authority, shall prescribe by rule
30 the requirements for the training, which must include at least the following:

31 “(a) How to properly prevent and contain disease outbreaks based on the current best evidence
32 in the field of infection and disease outbreak identification, prevention and control; and

33 “(b) The responsibility of staff members to report disease outbreaks under ORS 433.004.

34 “(4) The training may be provided in person, in writing, by webinar or by other electronic
35 means. The department shall make online trainings available.

36 “(5)(a) A facility must establish and maintain infection prevention and control protocols designed
37 to provide a safe, sanitary and comfortable environment and to prevent the development and trans-
38 mission of communicable diseases.

39 “(b) A facility must designate an individual to be responsible for carrying out the infection
40 prevention and control protocols and to serve as the primary point of contact for the department
41 regarding disease outbreaks. The individual must:

42 “(A) Be qualified by education, training and experience or certification; and

43 “(B) Complete specialized training in infection prevention and control protocols within three
44 months of being designated under this paragraph, unless the designee has received the specialized
45 training within the 24-month period prior to the time of the designation.

1 “(6) Upon hiring a new staff member, a facility shall provide to the staff member information
2 about the rights and responsibility of facility staff members to report disease outbreaks under ORS
3 433.004 and the safeguards for staff members who report disease outbreaks.

4 “(7) The department, in coordination with the authority, shall **develop uniform recommen-**
5 **dations for evidence-based best practices and protocols for preventing and responding to**
6 **disease outbreaks, consistent with existing guidance and rules and:**

7 “(a) Communicate regularly with facility administrators [*to recommend best practices and proto-*
8 *cols for preventing and responding to disease outbreaks*] **and licensees regarding the recommen-**
9 **dations** and provide contacts for local public health authorities; and

10 “(b) Provide notification to the facilities in a community where there is an elevated risk of an
11 infectious disease outbreak and the residents and staff may be at risk of exposure to the disease
12 outbreak.

13 “**SECTION 6.** ORS 443.416 is amended to read:

14 “443.416. (1) The Director of Human Services or authorized representative shall periodically
15 visit and inspect every residential care facility, residential training facility or residential training
16 home, **including a facility with a memory care endorsement under ORS 443.886**, to determine
17 whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and the rules of
18 the director, and to consult with and advise management concerning methods of care, treatment,
19 training, records, housing and equipment. Employees of the Department of Human Services and the
20 State Fire Marshal or authorized representative on request shall be permitted access to the premises
21 and records of individuals in the facility or home that are pertinent to fire safety.

22 “(2) The Director of the Oregon Health Authority or authorized representative shall periodically
23 visit and inspect every residential treatment facility or residential treatment home to determine
24 whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and the rules of
25 the director, and to consult with and advise management concerning methods of care, treatment,
26 training, records, housing and equipment. Employees of the Oregon Health Authority and the State
27 Fire Marshal or authorized representative on request shall be permitted access to the premises and
28 records of individuals in the facility or home that are pertinent to fire safety.

29 “(3) **If a visit to a facility or home is foreclosed by a public health emergency, as defined**
30 **in section 1 of this 2021 Act, the Director of Human Services or authorized representative**
31 **or the Director of the Oregon Health Authority or authorized representative shall conduct**
32 **a virtual inspection by electronic means. A virtual inspection must include all elements re-**
33 **quired for a visit or inspection under subsections (1) and (2) of this section that are capable**
34 **of being performed virtually.”**